



## Appendix

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“Treasury Decisions (1899), Vol 1:  
No. 20,290

Warehousing and distillers' bonds.

Suit should be first brought on warehousing bonds to recover tax on spirits before resort is had to the distiller's bond.

Treasury Department  
Office of  
Commissioner of Internal Revenue  
Washington, D. C., March 28, 1899.

SIR: Your letter of the 21st instant has been received, in which you inquire whether the principal and sureties on a grain distiller's bond (Form 30) are liable for the tax on distilled spirits produced under said bond and deposited in warehouse, although the tax on said spirits be covered by a warehousing bond (Form 80); and also whether suit can be brought on the distiller's bond to recover tax on spirits when the principal and surety on the warehousing bond are insolvent.

In reply, you are informed that, when it becomes necessary to institute suit for the tax on spirits covered by a warehousing bond, it should be first brought on the warehousing bond, and should the amount realized from such suit be insufficient to meet the tax, or should both principal and surety on the warehousing bond be found to be insolvent, resort may then be had to the distiller's bond (Form 30).

It may be laid down as a rule that remedy on the warehousing bond for the tax on spirits covered thereby should be exhausted before resort is had to the distiller's bond (Form 30).

Respectfully yours,

G. W. Wilson, Commissioner.

Mr. Park Agnew, Collector Sixth District, Alexandria, Va."

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#### APPLICABLE STATUTES AND REGULATIONS.

*From Internal Revenue Code*

##### *Title 26*

#### Section 2800. TAX.

##### (a) RATE.

(1) DISTILLED SPIRITS GENERALLY. There shall be levied and collected on all distilled spirits (except brandy) in bond or produced in or imported into the United States an internal revenue tax at the rate of \$2.25 (and on brandy at the rate of \$2.00) on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn from bond.

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##### (b) TIME FOR PAYMENT.

(1) BONDED DISTILLED SPIRITS. For time for payment of tax on bonded distilled spirits, see paragraph (1) of subsection (a).

(2) **DISTILLED SPIRITS NOT BONDED.** The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time within the period of limitation provided in section 3312, when knowledge of such fact is obtained by the Commissioner be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

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(c) **TIME OF ATTACHMENT.** The tax shall attach to distilled spirits, spirits, alcohol or alcoholic spirit, within the meaning of subsection (b) of section 2809 as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(d) **PERSONS LIABLE.** Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(e) **LIEN.**

(1) **PROPERTY SUBJECT TO.** The tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land whereon the said distillery is situated, and on any building thereon from the time said spirits are in existence as such until (except as provided in paragraph (3), the said tax is paid.

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#### Section 2814. DISTILLER'S BOND.

##### (a) **FORM AND APPROVAL.**

(1) **IN GENERAL.** Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the 1st day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be with at least two sureties, approved by the collector of the district, and for a penal sum not less than the amount of tax on the spirits that can be distilled in his distillery

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during a period of fifteen days. But in no case shall the bond exceed the sum of \$100,000.

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### Part III. Internal Revenue Bonded Warehouses.

#### Section 2872. ESTABLISHMENT AND CONTROL.

The Commissioner is authorized, in his discretion, and upon the execution of such bonds as he may prescribe, to establish warehouses, to be known and designated as internal revenue bonded warehouses, to be used exclusively for the storage of spirits distilled at a registered distillery, each of which warehouses shall be in charge of a storekeeper-gauger. Every such warehouse shall be under the control of the District Supervisor of the Alcohol Tax Unit district in which such warehouse is located, and shall be in the joint custody of the storekeeper-gauger and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper-gauger or other person who may be designated to act for him. No dwelling house shall be used for such a warehouse, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into a distillery. Such warehouses shall be under such further regulations as the Commissioner, with the approval of the Secretary, may prescribe. 53 Stat. 331.

Section 2873. REGULATIONS FOR ESTABLISHMENT,  
MAINTENANCE, AND SUPERVISION.

The establishment, construction, maintenance, and supervision of internal revenue bonded warehouses shall be under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. 53 Stat. 332.

Section 2874. DISCONTINUANCE OF WAREHOUSE AND  
TRANSFER OF MERCHANDISE.

(a) AUTHORIZATION. Whenever, in the opinion of the Commissioner, any internal revenue bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the Commissioner, and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

## Section 2879. DEPOSITS OF SPIRITS IN WAREHOUSES.

(a) **ENTRY FOR DEPOSIT.** The distillers of all spirits removed to an internal revenue bonded warehouse shall enter the same for deposit to such warehouse, under such regulations as the Commissioner may prescribe. Said entry shall be in such form as the Commissioner shall prescribe.

(b) **TIME FOR PAYMENT OF THE TAX.** The tax on all distilled spirits hereafter entered for deposit in internal revenue bonded warehouses shall be due and payable before and at the time the same are withdrawn therefrom and within eight years from the date of the original entry for deposit therein; and warehousing bonds hereafter taken under the provisions of the internal revenue laws shall be conditioned for the payment of the tax on the spirits as specified in the entry before withdrawal from the internal revenue bonded warehouse and within eight years from the date of said entry.

(c) **BOND REQUIRED.** The Commissioner shall prescribe the form and penal sums of bonds covering distilled spirits in internal revenue bonded warehouses and in transit to and between such warehouses: **PROVIDED,** That the penal sums of such bonds covering distilled spirits shall not exceed in the aggregate \$200,000 for each such warehouse.

(d) **RENEWAL OF BOND.** A new bond shall be required in case of the death, insolvency, or removal of the surety or sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner.



And in case the warehouseman fails or refuses to give the bond required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of tax found to be due, as ascertained by him from the report of the storekeeper-gauger if no bond was given, or from the terms of the bond if a bond was given. But this provision shall not exclude any other remedy or proceeding provided by law.

Section 2880. WITHDRAWAL FROM WAREHOUSE AND  
COLLECTION OF TAX ON SPIRITS SUBJECT TO EX-  
CESSIVE LEAKAGE.

(a) POWER OF THE COMMISSIONER. If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package deposited in an internal revenue bonded warehouse, other than the loss provided for in Section 2901 (b), which, in the opinion of the Commissioner, is excessive, he may instruct the district supervisor of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and direct the collector to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is

not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

Section 4041. ISSUE OF INSTRUCTIONS, REGULATIONS,  
AND FORMS.

(a) IN GENERAL. The Secretary shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistent with law, to be used under and in execution and enforcement of the various provisions of the internal revenue laws; and he shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law.

Section 407. LIQUOR TAX ADMINISTRATION ACT.

The distinction between distillery bonded warehouses, general bonded warehouses, and special bonded warehouses is hereby removed, and any warehouse for the storage of spirits distilled at a registered distillery, prior to tax-payment, shall be operated as an Internal Revenue Bonded Warehouse. The establishment, construction, maintenance, and supervision of Internal Revenue Bonded Warehouses shall be under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

**REGULATIONS FOR INTERNAL REVENUE BONDED WAREHOUSES ISSUED BY COMMISSIONER OF INTERNAL REVENUE WITH THE APPROVAL OF THE SECRETARY OF THE TREASURY. (TAKEN FROM TREASURY DECISION 4651.)**

Par. 44. The proprietor of each Internal Revenue Bonded Warehouse shall furnish transportation and warehousing bond on Form 1571 in a penal sum sufficient to cover the tax at the rate imposed by law, now or hereafter in force, on all distilled spirits to be stored in such warehouse and to be in transit thereto at any one time: Provided, That the maximum penal sum of such bond shall not exceed \$200,000 for each such warehouse: And provided further, That the proprietor of any distillery, general or special bonded warehouse established according to law and actually being used on the date of the enactment of the Liquor Tax Administration Act for the storage of distilled spirits on which the tax has not been paid, may furnish, in lieu of new bond on Form 1571, a consent of surety on Form 1533 (supplemented, if necessary, as provided in Paragraph 45 hereof), extending the terms of his existing warehousing, or transportation and warehousing, bond or bonds as the case may be, to cover the tax on distilled spirits stored in, and in transit to, the Internal Revenue Bonded Warehouse operated by him.

Par. 50. A new bond may be required at any time, in the discretion of the District Supervisor, or under instructions of the Commissioner. A new bond shall be required immediately in case of the death, removal, or insolvency of a personal surety, or insolvency of a corporate surety. Executors, administra-

tors, assignees, receivers and trustees continuing the business must execute a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When, in the opinion of the District Supervisor, the interests of the Government demand it he shall require the proprietor of an Internal Revenue Bonded Warehouse to give a new bond for an increased amount.

Par. 68. Where a new bond (Form 1571) in a penal sum sufficient to secure the tax on all distilled spirits in the internal revenue bonded warehouse and in transit thereto is filed to supersede a bond or bonds of the same or a prior series and there is no record of violation of law or regulation by the principal, the District Supervisor shall, after approval of the superseding bond, prepare Form 1490, "Notice of Bond Termination", in quadruplicate (in quintuplicate if there are two sureties), and forward the original to the Deputy Commissioner, one copy to each obligor on the bond, and retain one copy to be filed with the bond to which it relates. Where assessments have been made against the principal, the District Supervisor will not issue Form 1490 until a statement has been obtained from the Collector of Internal Revenue that such assessments have been paid.

Par. 70. Upon receipt of an application for the release of a bond (Form 1571), or of a bond of a prior series, the District Supervisor will examine his records to ascertain whether there is any outstanding liability against the bond. If and when the District Supervisor is satisfied that there is no outstanding

liability against a bond, the release of which has been applied for, he will prepare Form 1491, "Notification of Release of Bond", in quadruplicate (in quintuplicate if there are two sureties), and forward the original copy to the Deputy Commissioner, one copy to each obligor on the bond, and retain one copy to be filed with the bond to which it relates. Where an offer in compromise of civil liability or an application for remission, or claim for abatement of taxes, has been sent to the Deputy Commissioner, and notice of final action has not been received, the District Supervisor will not take any action toward the release of the bond until such notice has been received, and a statement has been obtained from the Collector of Internal Revenue that the tax involved and all outstanding assessments, if any, have been paid.

Par. 95. Distilled spirits deposited in an Internal Revenue Bonded Warehouse may be transferred in bond to another such warehouse, or withdrawn upon tax-payment, or withdrawn in bond free of tax for exportation or other lawful purposes.

Par. 102. Distilled spirits deposited in an Internal Revenue Bonded Warehouse in original packages may be transferred to another such warehouse for storage therein. Spirits deposited in storage tanks may also be so transferred in approved containers.

Par. 103. Where the transfer is to be made between bonded warehouses in the same supervisory district, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Part 1 of Form 236, in quadruplicate. If the spir-

its are to be drawn from storage tanks, the application will show, in addition to the other applicable data, the kind of spirits and the maximum quantity in tax-gallons to be transferred. All copies of the form will be forwarded by the applicant to the District Supervisor. If the applicant has on file a good and sufficient bond, the District Supervisor will execute Part 2 and Part 3 of the form and forward all copies to the storekeeper-gauger at the transferring warehouse.

Par. 113. Where the transfer is to be made between warehouses in different districts, the proprietor of the receiving warehouse shall file with the District Supervisor of his district an application for the transfer of the spirits on Part 1 of Form 236, in quintuplicate, in the manner indicated in paragraph 103. If the applicant has on file a good and sufficient bond, the District Supervisor will execute the certificate to that effect on Part 2, and transmit all copies to the District Supervisor of the district in which the transferring warehouse is located. The District Supervisor of such district will execute Part 3, his order to the storekeeper-gauger to gauge and release the spirits, and will then forward all copies to the storekeeper-gauger at the transferring warehouse, who will proceed as in the case of the transfer of spirits between warehouses in the same district.

Par. 118. In case the proprietor of a bonded warehouse fails or refuses to give bond as required, or to renew the same, or neglects immediately to withdraw the spirits and pay the tax thereon, or if he neglects

to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of the tax found to be due, as ascertained by him from the report of the storekeeper-gauger if no bond was given, or from the terms of the bond if a bond was given.

Par. 119. If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package deposited in an Internal Revenue Bonded Warehouse, other than the loss provided for in Section 3221, R. S., as amended, which, in the opinion of the Commissioner is excessive, he may instruct the District Supervisor of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and direct the collector to collect the tax accrued upon the original quantity entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired.

Par. 120. Whenever the owner of distilled spirits stored in any Internal Revenue Bonded Warehouse fails, upon the discontinuance of such warehouse, to transfer such spirits to such other warehouse as the Commissioner may designate, and within the time prescribed by him, or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such spirits may be seized and

sold by the Collector in the same manner as goods are sold upon distraint for taxes.

Par. 130. No allowance can be made under Section 307 of the Liquor Tax Administration Act, or any other statute, for losses of distilled spirits by leakage or evaporation from railroad tank cars, or from storage tanks in a bonded warehouse, or from packages filled from such storage tanks. When a storage tank is emptied, the loss will be ascertained by the storekeeper-gauger and reported to the District Supervisor. Tax will be assessed and collected on such loss, unless the same is due to destruction by accidental fire or other casualty or to theft, and the tax remitted under Sections 3221 and 3223 R. S., or under Section 16 of the Liquor Law Repeal and Enforcement Act, respectively. When a package filled from a warehouse storage tank is withdrawn, tax will be collected on the original contents of such package unless withdrawn tax-free. If withdrawn tax-free, tax will be collected on the difference, if any, between the original gauge and the withdrawal gauge.

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The foregoing regulations are taken from Treasury decision 4651 dated June 27, 1936, governing Internal Revenue Bonded Warehouses. There are in all 138 paragraphs covering details of construction, operation and control of such warehouses.